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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,590	07/02/2007	Osamu Fujita	1560-0471PUS1	5637
2292 7590 03/26/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER DAY, HERNG DER				
ART UNIT 2128		PAPER NUMBER		
NOTIFICATION DATE 03/26/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/594,590

Applicant(s)

FUJITA, OSAMU

Examiner

HERNG-DER DAY

Art Unit

2128

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to Applicant's Amendment ("Amendment") to Office Action dated September 22, 2008, filed December 18, 2008.

1-1. Claim 1 has been amended. Claims 2-4 have been canceled. Claims 5-10 have been added. Claims 1 and 5-10 are pending.

1-2. Claims 1 and 5-10 have been examined and rejected under 35 U.S.C. 112 and 101. There is no art rejection for current claims reciting "determining an order of the plurality of stored data in accordance with *the importance and the identifier*" or its equivalent, but Examiner will do an additional search pending correction of the USC 112 and 101 issues below.

Drawings

2. The replacement drawing sheet received on December 18, 2008, incorporating the proposed drawing corrections to figure 9 is acceptable. The objection to the drawings has been withdrawn.

Abstract

3. The Examiner has acknowledged without objection that the abstract has been amended.

Specification

4. The disclosure is objected to because of the informalities identified in the *amended* sheets of the corresponding PCT Application No. PCT/JP2005/004452. Appropriate correction is required.
5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "A computer readable medium" in line 1 of claim 10.

Claim Objections

6. Claim 1 is objected to because the " ," before the " ," in line 4 of the claim should be removed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1 and 5-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

8-1. The amended independent claim 1 recites the limitation, “determines an order of the plurality of data in accordance with *the importance and the identifier*” in lines 8-9 of the claim. The newly added independent claim 9 recites the limitation, “determining an order of the plurality of stored data in accordance with *the importance and identifier*” in lines 4-5 of the claim. The newly added independent claim 10 recites the limitation, “determining an order of the plurality of stored data in accordance with *the importance and the identifier*” in lines 6-7 of the claim. However, as described in the specification in lines 14-17 of page 12, “Each time an importance and a component identifier of a component are inputted to the important component selection apparatus 13, the importance and the component identifier are arranged *in order of magnitude of importance*.” In other words, the order of each data represented by an identifier is solely determined by the magnitude of the importance of each data. Therefore, the recited limitations, “determining (determines) an order of the plurality of (stored) data in accordance with *the importance and (the) identifier*” do not appear to have support in the original disclosure. Dependent claims are rejected as being dependent on a rejected claim.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1 and 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10-1. Claim 1 recites the limitation, “a transmitter that transmits, to the important component selection unit, an importance and an identifier for *a data* among the plurality of data” in lines 11-12 of the claim. It is vague and indefinite because it is unclear whether the above recited “*a*

data” has anything to do with “the data” being performed a processing as recited in lines 5-7 of the claim. For the purpose of claim examination, the Examiner will presume that “*a data*” as recited in line 11 of the claim refers exactly to “the data” as recited in lines 6-7 of the claim. Dependent claims are rejected as being dependent on a rejected claim.

Claim Rejections - 35 USC § 101

11. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

12. Claims 1 and 5-10 are rejected under 35 U.S.C. 101 because the inventions as disclosed in claims are directed to non-statutory subject matter.

12-1. Claims 1 and 5-10 are directed to the manipulation of abstract ideas of determining and predetermining an order of a plurality of data. This claimed subject matter lacks a practical application of a judicial exception (abstract idea) since it fails to produce a useful, concrete and tangible result. Specifically, the claimed subject matter provides for redetermining an order of a plurality of data. This produced result remains in the abstract and, thus, fails to achieve the required status of having real world value.

12-2. Claim 9 is an improper method claim. With the broadest reasonable interpretation, claim 9 recites purely mental steps because it has not been tied to any other statutory class (e.g., a *particular* apparatus) that may be used to accomplish the method steps and recites no physical transformation. Accordingly, claim 9 is not patent eligible process and is rejected as being directed to non-statutory subject matter.

Applicant's Arguments

13. Applicant argues the following:

13-1. Rejection Under § 112, First Paragraph and Second Paragraph

(1) “claim 1 has been amended and claims 2-4 has been cancelled through this Reply in order to expedite prosecution.” (Page 10, paragraph 2, Amendment)

(2) “claim 1 has been amended and claims 2-4 has been cancelled through this Reply in order to expedite prosecution.” (Page 10, the last paragraph, through Page 11, paragraph 1, Amendment)

13-2. Claim Rejection - 35 U.S.C. § 101

(3) “claim 1 has been amended and claims 2-4 has been cancelled through this Reply in order to expedite prosecution.” (Page 11, paragraph 2, Amendment)

13-3. 35 U.S.C. § 102 REJECTION - Inoue

(4) “Inoue fails to teach or suggest, in accordance with an identifier of the processor task, to update the priority level when performing the processor task, and to redetermine which of the processor task should be performed, after updating the priority level.” (Page 13, paragraph 1, Amendment)

(5) “Therefore, for at least the reasons stated with respect to claim 1, new independent claims 9 and 10 are also distinguishable from Inoue. New claims 5-8 are distinguishable from Inoue at least by virtue of their dependence on independent claim 1.” (Page 13, paragraph 4, Amendment)

Response to Arguments

14. Applicant's arguments have been fully considered.

14-1. Applicant's arguments (1) - (3) are persuasive. The rejections of claims 1-4 under 35 U.S.C. 112 and 101 in Office Action dated September 22, 2008, have been withdrawn.

14-2. Applicant's arguments (4) and (5) have been fully considered but are moot. The rejections of claim 1 under 35 U.S.C. 102(e) in Office Action dated September 22, 2008, have been withdrawn.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Herng-der Day whose telephone number is (571) 272-3777. The Examiner can normally be reached on 9:00 - 17:30.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kamini S. Shah can be reached on (571) 272-2279. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kamini S Shah/
Supervisory Patent Examiner, Art Unit 2128

/Herng-der Day/
Examiner, Art Unit 2128

March 13, 2009